



**Joint Standing Committee on the Corruption and Crime
Commission**

**The outcome of allegations of
misconduct made against officers of
the Corruption and Crime
Commission**

Report No. 28
June 2016

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

The outcome of allegations of misconduct made against officers of the Corruption and Crime Commission

Report No. 28

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 30 June 2016

Chairman's Foreword

In July 2013, a number of serious allegations of misconduct made against officers of the Corruption and Crime Commission's Operational Support Unit (OSU) were reported by then- Commissioner, Mr Roger Macknay QC, to the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC. Some of those matters were referred by the PICCC to WA Police (WAPOL) for investigation.

On the 17 June 2015 the Joint Standing Committee tabled its Report No. 19, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission*¹, outlining the 23 allegations of misconduct that had been made against Commission staff.

Subsequently, on 4 December 2015, the PICCC tabled an additional report in Parliament on further allegations made against OSU officers which had been investigated by WAPOL.² This report by the Parliamentary Inspector focused on deficient Commission procedures.

In response to recommendations made by the Joint Standing Committee, both the Commissioner and PICCC have provided a summary of the outcomes of the disciplinary and criminal investigations into Commission officers that have been undertaken since July 2013. This information appears in this report's Appendices.

The Committee is pleased to hear that adequate procedures are now in place at the Commission to ensure proper governance of the OSU (now renamed the ISS-Intelligence Support Service) in the future, and that the PICCC has been consulted about the proposed changes.

I would like to thank the Parliamentary Inspector, Hon Michael Murray QC, and the CCC Commissioner, Hon John McKechnie QC, for providing the information on the allegations of misconduct made against Commission officers since July 2013 that this report includes.

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- 1 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, 17 June 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf). Accessed on 18 February 2016.
 - 2 Parliamentary Inspector of the Corruption and Crime Commission, *Report on Activities in the Corruption and Crime Commission Relating to Assumed Identities, Traffic Infringement Notices and Special Constable Appointments*, 4 December 2015. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/\\$file/3688.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/$file/3688.pdf). Accessed on 31 May 2016.

I would like to thank my fellow Committee Members for their input on this report; the Committee's Deputy Chairman, the Member for Albany, Mr Peter Watson MLA; the Member for Forrestfield, Mr Nathan Morton MLA, and the Member for the South West Region, Hon Adele Farina MLC. The Committee members were ably supported by the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan.

A handwritten signature in blue ink, consisting of a vertical line, a horizontal line, and a large loop.

HON NICK GOIRAN, MLC
CHAIRMAN

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Findings and Recommendations

Finding 1

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Of the 17 notifications, made against officers and former officers of the Corruption and Crime Commission's Operational Support Unit, 15 have been resolved. The actions of the Commission in regard to notifications 12 and 14 are still being assessed by the Parliamentary Inspector of the Corruption and Crime Commission.

Recommendation 1

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The Parliamentary Inspector of the Corruption and Crime Commission inform the Joint Standing Committee on the outcome of his completed assessments of the Corruption and Crime Commission's actions concerning the allegations contained in notifications 12 and 14 in regard to the actions of officers and former officers of the Commission's Operational Support Unit.

Chapter 1

The outcome of allegations of misconduct made against officers of the CCC

In most instances, the OSU and the Commission had in place adequate procedures which would have supported ethical, honest and professional conduct by its officers, had they acted in that fashion. Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission.

Allegations of misconduct against officers in the CCC's Operational Support Unit

The then-Corruption and Crime Commissioner, Mr Roger Macknay QC, notified the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC, under section 196(4) of the *Corruption and Crime Commission Act 2003* on 18 July 2013 of a number of serious allegations of misconduct made against officers of the Commission's Operational Support Unit (OSU). The Joint Standing Committee first became aware of the allegations in September 2013 and was regularly kept informed of later developments by the PICCC.

On 3 December 2013, the PICCC referred a number of the allegations to WA Police (WAPOL) for criminal investigation and, if appropriate, prosecution. This decision created significant tension between the CCC and WAPOL given the important role the Commission has in overseeing the actions of WAPOL officers.³

WAPOL handed their final report to the PICCC on these matters on 27 March 2015. On the 17 June 2015 the Joint Standing Committee tabled its Report No. 19, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission*, outlining the 23 allegations of misconduct that had been made against Commission staff which the PICCC described as "among the most worrying allegations I have encountered in the short time I have been in office".⁴

3 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, 17 June 2015, p12. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf). Accessed on 18 February 2016.

4 Ibid, p4.

Chapter 1

On 4 December 2015 the PICCC tabled an additional report in Parliament on further allegations made against OSU officers which had been investigated by WAPOL.⁵ This report focused on deficient Commission procedures in the activities of assumed identities, the incurring of traffic infringement notices, and the Commission's applications to the Commissioner of Police for the appointment of its officers as special constables. The PICCC said that this Report had been made separately to the earlier one in June 2015 because:

*...it has involved particular legal and factual issues, systemic abuses and particular procedural deficiencies which have existed over a lengthy period of time, and because the remedial actions taken by the Commission to rectify these problems have required my extended oversight to properly assess their effectiveness and appropriateness.*⁶

At a closed hearing with the Committee on 17 February 2016, the PICCC was requested to provide the Committee with a detailed account of the outcome of the allegations reported in its Report 19. The PICCC's response to this request was provided to the Committee on 17 May 2016 and is included in Appendix 1.

The PICCC reports that two former CCC officers were convicted of offences, one was disciplined, and the investigation of five officers ceased upon their leaving the Commission. On the 20 November 2014 Deputy Chief Magistrate Woods imposed a suppression order on the names of the two former officers who were convicted. The allegations against these former officers had been made in the first notification from the CCC to the PICCC in July 2013. The suppression order remains in place and this matter will be the subject of a forthcoming Committee report. The disciplinary action taken by the Commission against its officers was first communicated to the PICCC so that he oversaw the process to ensure its effectiveness and appropriateness.⁷

The PICCC is still assessing the Commission's actions in regard to two of the notifications he received from the Commission during this time.

In this current report to the Committee, the PICCC says that:

5 Parliamentary Inspector of the Corruption and Crime Commission, *Report on Activities in the Corruption and Crime Commission Relating to Assumed Identities, Traffic Infringement Notices and Special Constable Appointments*, 4 December 2015. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/\\$file/3688.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/$file/3688.pdf). Accessed on 31 May 2016.

6 Ibid, p1.

7 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, 17 June 2015, p17. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf). Accessed on 18 February 2016.

In most instances throughout the OSU investigations ... the Commission unilaterally proposed changes to address the deficiencies identified, and to improve transparency and accountability. As agreed between the Commission and me from the outset of the investigations, I was consulted about the appropriateness of the proposals, and I provided my ongoing oversight and views.⁸

The PICCC states that the past failures by some of the officers within the OSU to achieve a level of ethical, honest and professional behaviour was more attributable:

...to their character failings, and to ineffective leadership, than an absence of adequate procedures. In most instances, the OSU and the Commission had in place adequate procedures which would have supported ethical, honest and professional conduct by its officers had, they acted in that fashion.⁹

The PICCC also notified the Committee in this report that on 9 May 2016 the Commission delivered to him revised procedures which had arisen from a protracted review conducted after the conclusion of the OSU investigations. These include policies covering the use of assumed identities, the use of section 42 notices on WAPOL, authorised officers, safety and welfare, and the use of force by Commission officers. The PICCC is currently considering the effectiveness and appropriateness of these new procedures.¹⁰

The Commission has also provided the Joint Standing Committee with a copy of these new procedures.¹¹

Allegations of misconduct by officers in the CCC's Electronic Collections Unit

On 26 November 2015 the Committee tabled a further report from the PICCC about misconduct allegations made against Commission officers in another of its units, the Electronic Collections Unit (ECU). The Report No. 25, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*, made five recommendations for the

8 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 17 May 2016.

9 Ibid.

10 Ibid.

11 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 24 May 2016.

Chapter 1

Commission to consider.¹² These included the three recommendations made by the PICCC in his report to the Committee, plus two made by the Committee.

The Report's Recommendation 2 was for the CCC to:

*... provide to the Joint Standing Committee and the Parliamentary Inspector a summary of the outcomes of the disciplinary and criminal investigations since July 2013 into officers of the Commission's Electronic Collection Unit and the Operational Support Unit.*¹³

On 21 December 2015, the CCC Commissioner, Hon John McKechnie QC, wrote to both the Committee and the PICCC responding to each of the Report's five recommendations, including a summary of the outcomes of the disciplinary and criminal investigations into Commission officers since July 2013.¹⁴ The Commissioner's response is included in Appendix 2. The summary of the outcomes of the investigation into the allegations made against the ECU officers is included on page 4 of the Commissioner's letter.

Conclusion

The allegations of misconduct made against the officers within the Commission's OSU and ECU were very worrying for the Committee and garnered widespread public attention. Media comment on the Committee's Report 19 included an editorial in *The West Australian* on 20 June 2015 saying that:

*The success of a public corruption agency depends to a large degree on it retaining the confidence of the public. These revelations make that task harder.*¹⁵

Just before he resigned in April 2014, then-Commissioner Macknay QC instituted a 'root and branch' review of the Commission's procedures, especially those used within the OSU.¹⁶ The Commission reported to Parliament on a major restructure and

12 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*, 26 November 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/DA6B49D29A80D96448257F0800181767/\\$file/Report%2025-%20CCC%20ECU%20staff%20misconduct-Nov2015%20Cropped.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/DA6B49D29A80D96448257F0800181767/$file/Report%2025-%20CCC%20ECU%20staff%20misconduct-Nov2015%20Cropped.pdf). Accessed on 31 May 2016.

13 Ibid, pi.

14 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 21 December 2015.

15 'Leadership, clear focus needed to get CCC on track', *The West Australian*, 20 June 2015, p30.

16 Corruption and Crime Commission, *Report on an Administrative Matter Relating to the Functions of the Commission Pursuant to Section 88 of the Corruption and Crime Commission Act 2003 ("the Repositioning Report")*, 21 April 2015, p3. Available at: www.ccc.wa.gov.au/Publications/Reports/Published%20Reports%202015/Corruption%20and%20Crime%20Commission%20Repositioning%20Report.pdf. Accessed on 12 June 2015.

repositioning of the organisation when it tabled its *Repositioning Report* on 21 April 2015.¹⁷

The current Commissioner, Hon John McKechnie QC, reported to the Committee in a recent closed hearing on the reviews and changes that had occurred within the Commission since the allegations were made, and since the recent amendments to the *Corruption, Crime and Misconduct Act 2003*:

I think we are about halfway through where I would like to go in terms of change. ... We are restructuring quite a lot of areas. ... The area that was the problem child [OSU], in typical bureaucratic fashion, was renamed so that the problem went away. It was basically run by itself and we are keeping a much better governance over it and I am quite as confident as one can be that the problems that occurred will not occur again, or will be picked up earlier. We have reviewed a raft of policies, which I think you have recently seen...¹⁸

The Commission's Acting Director of Operations, Mr David Robinson, who is responsible for the Investigation Support Services (ISS) unit, the renamed OSU, explained to the Committee at a public hearing on what the Executive had done to assure it that there had been appropriate changes within the unit:

... the main point in relation to the OSU matters is that it was about getting the balance right between the covertness of that unit and the accountability mechanisms that we need in place to hold people to account for their actions. We have taken a number of steps to properly address that balance. We, for example, have had significant changes in personnel, as you would be aware of. We have also introduced a number of mechanisms where there is greater corporate visibility over a lot more of the activities of that particular unit.

One of the things that we have been keen to do over the last few months is to make sure that, as an Executive, we are much more visible in terms of our ISS unit, as we now call it. So the Commissioner has made visits and I have made visits. We have regular contact with that unit and much more ongoing and intrusive management and scrutiny of that particular area.

One of the things that we have been keen to do as well is to make sure there are proper, appropriate levels of financial scrutiny of the

¹⁷ Ibid.

¹⁸ Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, Closed Hearing, 11 May 2016.

Chapter 1

*activities of that particular area. That now occurs, which was not probably as strong as it might have been in the past. In terms of recruitment practices as well, we have done a number of things to make sure that the recruitment practices of that unit are consistent with the Commission's practices and, obviously, values. I have talked in the broad, but that is the range of activities.*¹⁹

Finding 1

Of the 17 notifications, made against officers and former officers of the Corruption and Crime Commission's Operational Support Unit, 15 have been resolved. The actions of the Commission in regard to notifications 12 and 14 are still being assessed by the Parliamentary Inspector of the Corruption and Crime Commission.

Recommendation 1

The Parliamentary Inspector of the Corruption and Crime Commission inform the Joint Standing Committee on the outcome of his completed assessments of the Corruption and Crime Commission's actions concerning the allegations contained in notifications 12 and 14 in regard to the actions of officers and former officers of the Commission's Operational Support Unit.



HON NICK GOIRAN, MLC
CHAIRMAN

¹⁹ Mr David Robinson, Acting Director, Operations, Corruption and Crime Commission, *Transcript of Evidence*, 21 October 2015, p15.

Appendix One

PICCC's letter of 17 May 2016

PRIVATE EXAMINATION 17 FEBRUARY 2016 – QUESTIONS TAKEN ON NOTICE & RECOMMENDATION 2: OPICC REPORT DATED 4 DECEMBER 2015

I refer to my appearance before the Committee on 17 February 2016 and the Committee's request to provide it with a more detailed account of those matters described by the Commission in its letter dated 21 December 2015.

The information immediately below particularises the notifications the Commission provided to me under s 196(4) of the Act during the period when allegations were made against various OSU officers, and has been gathered from my offices' files.

I also refer to your letter dated 25 February 2015 and your request that I provide the additional information by updating the Commission's table in its letter to you.

I do not have access to, or use of, the original word document used to create the Commission's table. I am therefore unable to update that document. Instead, the information is attached in a document marked 'Annexure A' which was provided to me by the Commission on 16 May 2016 in response to my letter dated 23 February 2016. I disclose the information to you pursuant to s 208(4)(c) of the Act.

As you will appreciate, the Commission has sole power to take disciplinary action against its officers for conduct which amounts to misconduct or conduct which does not reach this threshold, but nevertheless is conduct which the Commission concludes should be the subject of disciplinary action. For this reason, it is the Commission which is the most authoritative source of information about the disciplinary action, if any, which has been taken against its officers, and that is why I obtained the information directly from it.

As you will be aware, s 196(9) of the Act precludes me from reviewing the action taken by the Commission in disciplining its officers, for such matters are inherently industrial in nature.

OSU INVESTIGATIONS

Notification 1

The date of the s196(4) notification from the Commission: 18 July 2013.

The nature of the allegations: It was alleged that multiple OSU officers had committed the following criminal offences:

1. they stole \$1000 of Commission funds,
2. they made false entries in official records, and
3. one officer gave false evidence to a private Commission examination during the Commission's investigation of the allegations.

The investigation body: The allegations were left with the Commission to conduct initial investigations, and were subsequently removed and referred by me to Police for criminal investigation on 3 December 2013.

The investigation outcome: **One Commission officer was convicted of stealing \$1,000, and one officer was convicted of stealing \$1,000 and of giving false evidence to a private Commission examination.**

Notification 2

The date of the s196(4) notification from the Commission: 22 October 2013.

The nature of the allegations: It was alleged that multiple OSU officers had committed the following criminal offences:

1. they fraudulently represented in official records that they were on duty when in fact they had gone on a fishing trip;
2. they fraudulently claimed during this time, and were paid, meal allowances to which they were not entitled;
3. one officer stole drinking glasses from a hotel;
4. one officer acted corruptly during an IT procurement process;
5. a senior OSU officer corruptly interfered with a recruitment process, and
6. the same senior OSU officer corruptly interfered with a W.A. Police internal investigation by inviting the Police officer, while under investigation, to attend the Commission's premises and to leave incriminating property in the senior OSU officer's custody.

The investigation body: The allegations were left with the Commission to conduct initial investigations, and subsequently allegations 1, 2, 3 and 4 were removed and referred to Police for criminal investigation on 3 December 2013. Allegations 5 and 6 were left with the Commission to continue to investigate.

The investigation outcome: **In respect of allegations 1-4, Police were unable to commence criminal proceedings against any Commission officer due to inadequately maintained official records kept by OSU officers. In respect of allegations 5-6, by the time the Commission's investigation was completed the senior OSU officer had left his employment, and the question of his misconduct was not pursued.**

Notification 3

The date of the s196(4) notification from the Commission: 12 November 2013.

The nature of the allegation: It was alleged by an OSU officer that the former Executive Director bullied, harassed and intimidated the officer.

The investigation body: The allegation was left with the Commission to conduct initial investigations, and it remained with the Commission.

The investigation outcome: **The allegation was not substantiated because both the complainant and the Executive Director had left their employment with the Commission by the time the Commission's investigation had concluded.**

I am currently assessing a broader-based bullying investigation which has been conducted by the Commission (see allegation 14 below).

Notification 4

The date of the s196(4) notification from the Commission: 16 December 2013.

The nature of the allegation: It was alleged that an OSU officer improperly used his assumed identity while obtaining tyres for his private motor vehicle.

The investigation body: The allegation was left with the Commission to conduct initial investigations, and remained with the Commission.

The investigation outcome: **There was insufficient evidence to substantiate the allegation.**

Notification 5

The date of the s196(4) notification from the Commission: 16 January 2014.

The nature of the allegation: It was alleged that a senior OSU officer and other officers had corruptly misrepresented to the Australian Taxation Office information concerning the percentage of business and private use of Commission vehicles.

The investigation body: The allegation was left with the Commission to conduct initial investigations, and was subsequently removed and referred by me to the Police for criminal investigation on 1 July 2014.

The investigation outcome: **The Police could not identify sufficient evidence to establish the origin of the false representation, or precisely how, or by whom, the information in the false representation was calculated. These factors, and the fact that the Commission had entered into an agreement to repay the tax deficiency, contributed to the Police decision not to commence criminal proceedings against any Commission officer.**

Notification 6

The date of the s196(4) notification from the Commission: 22 January 2014.

The nature of the allegation: It was alleged that an OSU officer breached the Commission's vehicle purchasing policies by attending upon a car dealer who was a personal friend, and purchasing four-wheel drive vehicles for the OSU, and accepted gifts from the dealer for doing so, which were shared among other OSU officers.

The investigation body: The allegation was left with the Commission to conduct initial investigations.

The investigation outcome: **The allegation could not be substantiated by the Commission.**

Notification 7

The date of the s196(4) notification from the Commission: 22 January 2014.

The nature of the allegation: It was alleged that an OSU officer improperly used Commission equipment in pursuit of his private photographic hobbies.

The investigation body: The allegation was left with the Commission to conduct initial investigations.

The investigation outcome: **The allegation was substantiated, but because the OSU's managerial policies governing the private use by OSU officers of Commission equipment were unclear and inconsistent, no disciplinary action was taken by the Commission against the officer concerned.**

Notification 8

The date of the s196(4) notification from the Commission: 11 February 2014.

The nature of the allegation: It was alleged that an OSU officer was convicted of a drug offence, but did not reveal his conviction to the Commission. As a consequence of the OSU officer subsequently applying to the Commissioner of Police for a special constable status, his drug conviction was not disclosed by the Commission to the Commissioner of Police, despite a declaration by a senior OSU officer that a thorough check of the officer's criminal antecedents had been conducted (but had not).

The investigation body: The allegation arose from the Police investigations being conducted into other allegations described above, and the relevant materials were provided to me by the Police and subsequently by the Commission during its preliminary investigations. This allegation gave rise to my broader investigation into the granting of special constable status to Commission officers.

The investigation outcome: **The allegation was substantiated. The outcome of my investigation was detailed in my Report to the Parliament dated 4 December 2015.**²⁰
[The Commission officer subject to the allegation was dismissed in December 2013 because he was untruthful in his responses to Commission investigators, Deputy Director McGowan's contract was allowed to lapse, and another Commission officer resigned from in December 2013.]

Notification 9

The date of the s196(4) notification from the Commission: 19 February 2014.

The nature of the allegations: Three allegations were made against an OSU officer:

1. the officer was knowingly the beneficiary of a recruitment process improperly manipulated by a senior OSU officer;
2. the officer, within a short time of being appointed, was the knowing beneficiary of a promotion to Team Leader after a process improperly manipulated by the same senior OSU officer, and
3. the officer told colleagues not to cooperate with the Commission investigators who were investigating the various allegations made against OSU officers.

²⁰ Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Report on Activities in the Corruption and Crime Commission Relating to Assumed Identities, Traffic Infringement Notices and Special Constable Appointments*, 4 December 2015. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/\\$file/3688.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/$file/3688.pdf). Accessed on 24 May 2016.

The investigation body: The allegations were left with the Commission to conduct initial investigations. During these investigations, the Police intercepted a telephone conversation between the OSU officer and a colleague in respect of a different allegation being investigated.

The investigation outcome: **The Commission's investigation of the officer ceased upon the officer resigning his employment with the Commission after being played the intercepted telephone conversation.**

Notification 10

The date of the s196(4) notification from the Commission: 24 February 2014.

The nature of the allegations: Two allegations were made against an OSU officer:

1. the officer unlawfully disclosed official information to a colleague about an internal investigation into the conduct of that colleague, and
2. the officer intentionally deleted electronic 'traps' from the Commission's databases designed to trace the use of the databases by Commission officers.

The investigation body: The allegations were left with the Commission to conduct initial investigations.

The investigation outcome: **The first allegation was substantiated, but the second allegation was not. The Commission determined that disciplinary action against the OSU officer was an adequate response in dealing with his conduct.**

Notification 11

The date of the s196(4) notification from the Commission: 19 March 2014.

The nature of the allegation: It was alleged that an OSU officer performed private mechanical work on his Commission surveillance vehicle (which was also used for private purposes) at the OSU site for two days during working hours.

The investigation body: The allegation was left with the Commission to conduct initial investigations.

The investigation outcome: **The allegation was unsubstantiated.**

Notification 12

The date of the s196(4) notification from the Commission: 19 March 2014.

The nature of the allegations: Three allegations were made against an OSU officer:

1. the officer entered false details in a surveillance logbook as to his location at a particular time to avoid responsibility for a traffic infringement notice (camera) for a speeding offence;
2. the officer accepted liability for a traffic infringement notice for a speeding offence which was incurred by his son (a separate incident to that in allegation 1), and
3. the officer accepted liability for a further traffic infringement notice for a speeding offence which was incurred by his son.

The investigation body: The allegations were left with the Commission to conduct initial investigations, and subsequently were removed and referred by me to the Police for criminal investigation on 14 April 2014. I took this course because I became aware that the Commission had not, from the outset, conducted a criminal or misconduct investigation, but a disciplinary investigation, and during that investigation – and without notice to me – the Commission entered into a deed of release with the officer concerned which resulted in the cessation of his employment.

The Police investigation of the OSU officer, his wife and his son could not establish sufficient evidence to commence criminal proceedings against any person. The Police explained that one reason for this was because the Commission, during its disciplinary investigation, disclosed the evidence to the officer concerned.

The investigation outcome: **I am still assessing the Commission's actions concerning these allegations.**

Notification 13

The date of the s196(4) notification from the Commission: 26 March 2014.

The nature of the allegation: It was alleged that an OSU officer improperly used his assumed identity in dealings external to his duties.

The investigation body: The allegation was left with the Commission to conduct initial investigations.

The investigation outcome: **The allegation was unsubstantiated.**

Notification 14

The date of the s196(4) notification from the Commission: 9 May 2014.

The nature of the allegations: Multiple allegations were made by various OSU officers of bullying, harassment and intimidation against the Executive Director.

The investigation body: The allegation was left with the Commission to conduct initial investigations, and was subsequently contracted-out by the Commission to a private company, Gregor & Binet. My assessment of that company's report is continuing.

The investigation outcome: **My assessment of Gregor & Binet's report and of the allegations is continuing.**

Notification 15

The date of the s196(4) notification from the Commission: 6 June 2014.

The nature of the allegation: It was alleged that systemic irregularities in the issue and use of assumed identities by OSU and Operations Directorate officers had occurred from the inception of the Commission.

The investigation body: The allegation was left with the Commission to conduct initial investigations, during which correspondence was exchanged with the Commission concerning the Commission's assumed identity jurisdiction and interpretation of the [Corruption and Crime Commission] Act. This allegation triggered my broader investigation of issues relating to the issue and use of assumed identities.

The investigation outcome: **My investigation of the allegations concluded with my Report dated 4 December 2015.**

Notification 16

The date of the s196(4) notification from the Commission: 18 June 2014.

The nature of the allegation: It was alleged that an OSU officer used OSU property in her home renovations. The allegation was first made by an OSU officer to Police during their investigation of other allegations.

The investigation body: The allegation was left with the Commission to conduct initial investigations. In separate correspondence, Police informed me that they had conducted preliminary enquiries into the allegation, and had decided to refer the allegation to the Commission because there was insufficient evidence to form a reasonable suspicion of criminality.

The investigation outcome: **It was ascertained that a colleague of the OSU officer concerned, who was also an electrician, helped the officer with her home renovations, but both denied that any OSU property was used therein. The allegation was not substantiated.**

Notification 17

The date of the s196(4) notification from the Commission: 21 July 2014.

The nature of the allegation: It was alleged that an OSU officer made derogatory statements about colleagues during a telephone conversation intercepted by Police during their investigations of other allegations.

The investigation body: The allegation was left with the Commission to conduct initial investigations.

The investigation outcome: **During a Commission private examination, the OSU officer concerned was played the intercepted telephone conversation.**

Further observations upon the OSU investigations

In most instances throughout the OSU investigations, in respect of most one-off or systemic procedural problems discovered in the Commission, the Commission unilaterally proposed changes to address the deficiencies identified, and to improve transparency and accountability. As agreed between the Commission and me from the outset of the investigations, I was consulted about the appropriateness of the proposals, and I provided my ongoing oversight and views.

In some cases, I made recommendations to the Commission for procedural changes, such as those which appear in my Reports dated 10 June 2015²¹ and 4 December 2015.²²

While I am satisfied that the procedural changes effect an improved level of accountability, transparency and managerial oversight within the Commission (and in my own oversight of the Commission, for example, by the monthly reporting by the Commission to me of each Commission officer's demerit points accumulation in both their private and assumed driver's licences), it is important, I think, to maintain an awareness of two considerations.

First, proper procedures do not ensure ethical, honest and professional behaviour within the Commission (or in any other organisation), and the past failures by some Commission officers to achieve this expected level of behaviour is more attributable to their character failings, and to ineffective leadership, than an absence of adequate procedures. In most instances, the OSU and the Commission had in place adequate

21 Joint Standing Committee on the Corruption and Crime Commission, Report 19- *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, 17 June 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC+Report+19-+CCC+misconduct+allegations-+June+2015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC+Report+19-+CCC+misconduct+allegations-+June+2015.pdf). Accessed on 24 May 2016.

22 Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Report on Activities in the Corruption and Crime Commission Relating to Assumed Identities, Traffic Infringement Notices and Special Constable Appointments*, 4 December 2015. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/\\$file/3688.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913688af7989de21d56657f48257f11000dd4f1/$file/3688.pdf). Accessed on 24 May 2016.

procedures which would have supported ethical, honest and professional conduct by its officers had they acted in that fashion.

Second, a number of impugned Commission officers, for one reason or another, have left the Commission as a consequence of the investigations undertaken. The right to discontinue their employment rested solely with the Commission.

New officers have been recruited by the new leadership in the Commission in a very different environment of heightened expectations of ethical, honest and professional behaviour, supported by improved processes of governance of the ISS [Intelligence Support Service], as it is now called, at the senior levels of the administration at the Commission's premises.

In addition, the Commission's restructuring and restaffing of its Legal Services Directorate accomplished the proper purpose of such a directorate – the giving of objective legal advice to the Executive and to the Commission's officers.

On 9 May 2016 the Commission delivered to me an array of revised procedures in various aspects of its business which arose from a protracted review conducted after the OSU saga. The areas of business are Assumed Identities; s42 notices; Authorised Officers; Safety and Welfare, and Use of Force. I am currently considering the effectiveness and appropriateness of these procedures.

Finally, as I alluded to on page 1, while I had the function to determine misconduct by a Commission officer pursuant to s195(1)(b) of the Act during the OSU investigations, the Commission also had that function. The Commission, with my agreement, fulfilled that function when it thought it was appropriate to do so because, as seen, it had the task of conducting the initial misconduct investigation in respect of an allegation. In some instances where a Commission officer's employment ceased, the Commission chose to make a determination of misconduct, sometimes with notice to me before the action was taken.

Since the amendments to the [Corruption and Crime Commission] Act in 2015, the Commission no longer has the function or power of determining the question of minor misconduct by its officers. I touch upon this rather different investigatory environment in my confidential letter dated 3 May 2016 concerning X.

I make these addition observations for the benefit of the Committee. I considered a detailed description of the cessation of each Commission officer's employment during these investigations unnecessary in my two reports because they were not acts carried out by me, and because the information was not relevant to my functions fulfilled during the investigations.

Recommendation 2: OPICCC Report Dated 4 December 2015

On 23 February 2016 I wrote to the Commission and asked if it had accepted and had acted upon Recommendation 2 in my Report dated 4 December 2015. On 11 March 2016 the Commission replied with the following relevant points:

1. it has reviewed and analysed all demerit points incurred in the natural names and assumed identities of all OSU/ISS officers in the three year period which preceded my Report;
2. two officers had incurred demerit points in an assumed identity in a private capacity. One officer incurred three demerit points in respect of one offence, and one officer incurred two demerit points for one offence on two separate occasions;
3. one officer had incurred two demerit points in respect of one offence in an assumed identity in operational circumstances;
4. it was advised by the W.A. Police that it is not possible to retrospectively apply demerit points incurred by an officer in his or her assumed identity to the officer's natural driver's licence due to:
 - a) the 12 month statute of limitations on the offences committed, and
 - b) the technical limitations of the Infringement Processing System not being able to retrospectively apply points to a driver's licence with consideration to the historical nature of the offences, and
5. for these reasons, the Commission does not consider it feasible to have the demerit points transferred to the officers' natural driver's licences.

This concludes my response to you in respect of information requested of me during my appearance on 17 February 2016.

I remain happy to assist you in any further way I can, should you so require.

Yours sincerely,

HON MICHAEL MURRAY AM QC

PARLIAMENTARY INSPECTOR

Appendix Two

CCC Commissioner's response of 21 December 2015



Your Ref: -
Our Ref: 02243/2015/TC
CMIS Auth No: -

21 December 2015

Hon. Nick Goiran, MLC
Chairman
Joint Standing Committee on the
Corruption and Crime Commission
Floor 1, 11 Harvest Terrace
WEST PERTH WA 6005

Cc: Hon. M J Murray, AM, QC
Parliamentary Inspector of the
Corruption and Crime Commission
Level 3, BGC Centre
28 The Esplanade
PERTH WA 6000

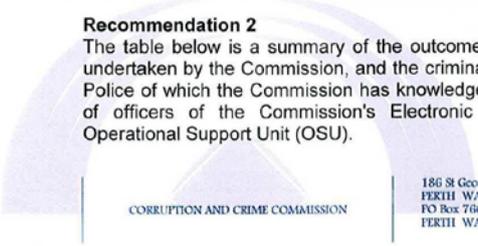
Dear Chairman

**PARLIAMENTARY INSPECTOR'S REPORT ON ALLEGATIONS OF MISCONDUCT
MADE AGAINST OFFICERS IN THE CORRUPTION AND CRIME COMMISSION'S
ELECTRONIC COLLECTION UNIT**

I refer to the above report tabled in Parliament on 26 November 2015 by the Joint Standing Committee ("the Committee") and provide the following answers in response to the Committee's findings and recommendations:

Recommendation 1
The Commission will provide an update to the Committee and the Parliamentary Inspector by 30 June 2016 as to the progress it has made in developing a Memorandum of Understanding with interstate agencies in accordance with the recommendation of the Committee's Report No. 18.

Recommendation 2
The table below is a summary of the outcomes of the disciplinary investigations undertaken by the Commission, and the criminal investigations undertaken by WA Police of which the Commission has knowledge, since July 2013 into the conduct of officers of the Commission's Electronic Collection Unit (ECU) and the Operational Support Unit (OSU).



CORRUPTION AND CRIME COMMISSION

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VI-15

Allegation/ suspected breach	Criminal/ disciplinary investigation	Outcome	Penalty
OSU			
Theft of \$1000 of Commission funds, false entries made in Commission records to conceal this theft and the giving of false evidence to an Acting Commissioner, all of which arise from the alleged burglary of motel accommodation in Geraldton occupied at the time by OSU officers in May 2011	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 3 December 2013	OSU officer 1 convicted of: 1 x falsification of record contrary to s 85 <i>Criminal Code 1913</i> ; 1 x giving false evidence to Commission contrary to s 168 <i>Corruption and Crime Commission Act 2003</i> OSU officer 2 convicted of: 2 x falsification of record by public officer, contrary to s 85 <i>Criminal Code 1913</i>	6 months, 1 day imprisonment, suspended for 12 months for falsification of a record and 18 months, suspended for 12 months for giving false testimony (to be served concurrently) 18 months imprisonment, suspended for 12 months, on each count, to be served concurrently
False entries made in Commission records representing that OSU officers were working when in fact they were fishing and the unlawful claiming of meal allowances during this activity	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 3 December 2013	No charges laid by WA Police	Not applicable
Former Commission officer improperly interfering with tender procurement process in favour of a company by whom the officer is now employed	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 3 December 2013	No charges laid by WA Police	Not applicable
Theft of glasses from hotel at which a number of OSU officers had been drinking	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 3 December 2013	No charges laid by WA Police	Not applicable
Falsification of meal claim allowances	Criminal investigation; removed by	No charges laid by WA Police	Not applicable

	Parliamentary Inspector and referred to WA Police for investigation on 18 February 2014		
Inaccurate representation of private usage of OSU vehicles to Australian Taxation Office (FBT)	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 1 July 2014	No charges laid by WA Police	Not applicable
Wrongfully accepting liability for traffic infringements issued for 3 speeding offences	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 14 April 2015	No charges laid by WA Police	Not applicable
Receiving stolen property and destroying evidence related to alleged theft of glasses from hotel	Criminal investigation; arose out of ongoing WA Police investigation	No charges laid by WA Police	Not applicable
Use of Commission property for private purposes	Criminal investigation; arose out of ongoing WA Police investigation	No charges laid by WA Police	Not applicable
Improper usage by OSU officers of driver's licences obtained under an assumed identity	Criminal investigation; arose out of ongoing WA Police investigation	No charges laid by WA Police	Not applicable
Improper usage by OSU officer of driver's licence obtained under an assumed identity where no WA driver's licence was obtained	Criminal; arose out of ongoing WA Police investigation	No charges laid by WA Police	Not applicable
Uneconomic and irregular practices in purchasing and hiring motor vehicles	Criminal investigation; arose out of ongoing WA Police investigation	No charges laid by WA Police	Not applicable
Dishonesty; deliberate falsification of Commission records; misappropriation of \$1,000 public monies; failure to report misconduct; unscrupulous in use of public funds; potentially	Disciplinary investigation by CCC	Breach of Commission Code of Conduct; breach of discipline; breach of employee's duty of fidelity and good faith	Dismissal

adversely impacting upon security of Commission's operations			
Knowingly preparing and submitting false record; party to misappropriation of \$1,000 public monies; giving untruthful evidence to Acting Commissioner	Disciplinary investigation by CCC	Breach of Commission Code of Conduct ; breach of discipline; breach of employee's duty of fidelity and good faith	Dismissal
Failure to provide accurate and honest explanation to Commission investigators when required; failure to cooperate with inquiry into alleged misconduct; dishonesty	Disciplinary investigation by CCC	Breach of Commission Code of Conduct; Breach of discipline; breach of employee's duty of fidelity and good faith	Dismissal
Unauthorised disclosure of official information	Disciplinary investigation by CCC	Breach of Commission Code of Conduct; breach of discipline; breach of employee's duty of fidelity and good faith	Disciplinary warning
ECU			
Possession of prohibited drug	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 7 January 2015	ECU officer charged with: 2 x possession of prohibited drug (1,3-dimethylamylamine) contrary to s 6(2) <i>Misuse of Drugs Act 1981</i> Prosecution discontinued by DPP	Not applicable
Aiding the possession of prohibited drug by a Commission officer	Criminal investigation; removed by Parliamentary Inspector and referred to WA Police for investigation on 7 January 2015	No charges laid by WA Police	Not applicable
Inappropriate language and behaviour in workplace; unjustified absenteeism from work; failure to report misconduct; unfair and/or unreasonable treatment of staff; unsatisfactory work performance	Disciplinary investigation by CCC	No breach of discipline	Improvement action
Improper staff appointment; preferential treatment of staff; inappropriate language and behaviour in	Disciplinary investigation by CCC	No breach of discipline	Improvement action

workplace; unfair and/or unreasonable treatment of staff; mismanagement of staff			
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Recommendation 3

The Commission agrees with the recommendation that it not exercise its power to refer to the Police, or other law enforcement agency, a suspicion about a Commission officer having committed an offence without first consulting the Parliamentary Inspector. The Commission advised the Parliamentary Inspector accordingly in its letter dated 15 September 2015.

Recommendation 4

The report by Gregor and Binet made 11 recommendations in respect of the systemic issues identified in the ECU, being recommendations 4 to 14 of their report. In answer to Recommendation 4 of the Committee's Report, I advise as follows against each of the relevant recommendations contained in the Gregor and Binet Report:

- *Recommendation 4 - Implementation of quality control systems*
It was recommended that a quality control system be implemented to check that lines are correctly provisioned and that errors are recorded and analysed to enable systems of work to be modified to reduce error rates. New systems have been introduced to monitor quality control and reduce errors. Positive reports from the State and Commonwealth Ombudsmen indicate that those systems are effective.
- *Recommendation 5 - Participation in team building activities*
It was recommended that the ECU workgroup participate in appropriately tailored team building activities. A consultant has been engaged and there has been active participation in team building strategies by senior officers in the ECU. The Acting Director Operations has been closely involved in this process. The consultant has worked with ECU staff to develop a number of formal and informal team building strategies. Early indications are that this process has been successful in developing more effective working relationships in the unit.
- *Recommendation 6 - Restructuring the ECU*
It was recommended that consideration be given to restructuring the ECU by abolishing the roles of Manager Evidence and Compliance (Level 7) and Manager Operations (Level 7) with a view to dividing the duties of these roles and the role of a Senior Monitor (Level 5) between three or four Senior Monitors performing a rotating shift pattern. This issue will be considered as part of broader organisational change currently occurring.
- *Recommendation 7 - Selection processes*
It was recommended that selection panel members with prior personal or professional relationships be excluded from the selection panel or at the least, the selection panel report include details of any personal and professional relationships the panel members have with each applicant. This will ensure any perceived or actual grounds of bias can be taken into account when the

Selection Panel's report recommendations are considered. The Selection Panel Report template has been amended in accordance with this recommendation.

- *Recommendation 8 - Alternative external panel member*
It was recommended that consideration be given to having an alternative external panel member so that internal applicants who undergo multiple selection processes do not have a perception that the selection panel member has a pre-existing view of them. The Commission has actively engaged a wide range of external consultants (panel members) to participate in Commission selection processes. In making a recommendation to use a specific consultant, due consideration will be given as to whether the consultant has interviewed the applicant on several occasions previously.
- *Recommendation 9 - People Services' role in performance management*
It was recommended that People Services coordinate the storage of performance documentation (Individual Work and Development Plans (IWDPs)) ideally in a central location and actively oversight all or at the least regularly audit a sample of performance appraisals to ensure effectiveness of performance management within the organisation. A report is provided to the Commission Executive Committee (CEC) each month on the completion rate of IWDPs by directorate to ensure that the each stage in the IWDP cycle is completed in accordance with prescribed timelines. Each directorate also holds a formal central records repository of all IWDPs undertaken within that area during the course of the IWDP cycle. At the cessation of the IWDP cycle the written records will be collected, inspected and held by People Services on each employee's personnel file. End of cycle review and analysis will be provided to the CEC to for consideration and action as appropriate.
- *Recommendation 10 - Standard investigation protocols*
It was recommended that standard investigation protocols be observed for internal investigations including properly cautioning witnesses before they are interviewed, and ensuring searches are within scope. The Commission has standard operating procedures in place regarding the interviewing of persons of interest and witnesses. These procedures require investigators to issue criminal cautions to persons of interest and to be mindful of protecting the rights of witnesses when conducting interviews.
- *Recommendation 11 - Drug and alcohol awareness training*
It was recommended that a fitness for work education campaign focussing on the effect and legality of over the counter drugs, supplements and health foods is implemented to support a comprehensive fitness for work/drug and alcohol policy. The Commission has a fitness for work policy, the purpose of which is to ensure a productive and safe workplace by eliminating or managing the risks associated with impaired fitness for work. Drug and alcohol awareness training has been delivered to Commission officers.
- *Recommendation 12 - Welfare checks*
It was recommended that People Services ensure welfare checks are conducted with staff on personal leave weekly by their Manager and fortnightly

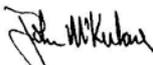
by a HR representative. This has been incorporated into People Services processes.

- *Recommendation 13 - Employee voice mechanisms*
It was recommended that the Commission review and expand its employee voice mechanisms with a supporting education campaign. People Services have reviewed and communicated these mechanisms to staff. The Commission will do so again every six months.
- *Recommendation 14 - Code of Conduct*
It was recommended that the Commission Code of Conduct be amended to include an obligation to maintain and not tarnish the Commission's reputation and standing in the community. The Code of Conduct was recently reviewed and amended to highlight a Commission officer's obligation to report suspected breaches of the Code in a timely manner and the obligation to maintain the Commission's reputation and standing in the community.

Recommendation 5

The Commission agrees with the recommendation not to contract a service provider to investigate an allegation of misconduct made against a Commission officer in cases where the Parliamentary Inspector leaves the allegation with the Commission under section 196(4) of the *Corruption, Crime and Misconduct Act 2003*, without first consulting with the Parliamentary Inspector. The Commission advised the Parliamentary Inspector accordingly in its letter dated 15 September 2015.

Yours sincerely



John McKechnie, QC
COMMISSIONER

Appendix Three

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption, Crime and Misconduct Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.